

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

8	HAROLD DYSON,)	No. C 07-3725 MJJ (PR)
9	Petitioner,)	ORDER OF DISMISSAL;
10	v.)	GRANTING LEAVE TO
11	BEN CURRY, et al.,)	PROCEED IN FORMA
12	Respondent.)	PAUPERIS
		_____	(Docket No. 2)

Petitioner, a California prisoner, filed this pro se habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the denial of parole by the California Board of Prison Terms in 2006. Petitioner states that a “petition, appeal or other post-conviction proceeding” is “now pending” in the California Court of Appeal. See Petition at 5.

The exhaustion requirement applicable to federal habeas petitions is not satisfied if there is a pending post-conviction proceeding in state court. See 28 U.S.C. § 2254(b)-(c); Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). If a post-conviction challenge to a criminal conviction is pending in state court, a potential federal habeas petitioner must await the outcome of the challenge before his state remedies are considered exhausted. See id. Moreover, the rule in Sherwood applies whether or not the issue raised in the pending state petition is included in the federal petition because a pending state court challenge may result in the reversal of the petitioner's conviction, thereby mooting the federal petition. See id. (citations omitted).

As petitioner has a post-conviction proceeding pending in the California Court of Appeal, the instant petition for a writ of habeas corpus is DISMISSED without prejudice to

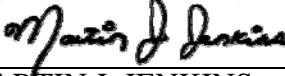
1 refiling once all state court post-conviction challenges to petitioner's conviction and sentence
2 have been completed, and all claims petitioner wishes to raise in federal court have been
3 presented to the California Supreme Court. See 28 U.S.C. § 2254(b)-(c); Rose v. Lundy, 455
4 U.S. 509, 522 (1982) (holding every claim raised in federal habeas petition must be
5 exhausted).

6 The application to proceed in forma pauperis is GRANTED.

7 The Clerk shall close the file and terminate Docket No. 2.

8 IT IS SO ORDERED.

9 DATED: 8/9/2007


10 MARTIN J. JENKINS
United States District Judge